

# SENATE BILL REPORT

## 2SHB 1580

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As of March 19, 2009

**Title:** An act relating to establishing a pilot local water management program in one qualified jurisdiction.

**Brief Description:** Establishing a pilot local water management program in one qualified jurisdiction.

**Sponsors:** House Committee on General Government Appropriations (originally sponsored by Representatives Kessler, Walsh, Santos, Morris, Blake, Takko, Chandler, McCoy, Newhouse, Kretz, Linville, Jacks, Ormsby, Van De Wege, Hurst, Warnick, Nelson, Hinkle, Springer and Kenney).

**Brief History:** Passed House: 3/05/09, 97-0.

**Committee Activity:** Environment, Water & Energy: 3/18/09.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** Karen Epps (786-7424)

**Background:** The Watershed Planning Act establishes a process for local groups to develop and implement plans to manage and protect local water resources and rights. The process requires watershed planning to include an assessment of water supply and use in the planning area and development of strategies for future water use. Watershed planning may include water quality, habitat, and instream flow elements. Local governments initiating watershed planning create a planning unit and designate a lead agency to provide staff support. The local groups authorized to develop watershed plans are organized by water resource inventory areas (WRIA). A WRIA is an area determined to be a distinct watershed or river basin. The Department of Ecology (Ecology) identifies 62 WRIsAs.

In 2008 the Legislature authorized Ecology to spend \$195,000 to design a comprehensive water management structure for the Walla Walla River Basin. The Legislature requested that the structure address the allocation of functions, authorities, resource requirements, and issues associated with interstate watershed management of the basin. A report was written to the Legislature outlining the proposed governance and water management structure in December 2008.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:** The initiating entities, consisting of the county boards of commissioners within the planning area, the city council of the largest Washington city in the planning area, the largest water user in the planning area, and all affected federally-recognized tribes within the planning area, may collectively petition Ecology to establish a Water Management Board (Board). The initiating entities must demonstrate that there is community support for the development of a local water management plan, that there is commitment to enhance instream flows for fish, and that there is an adequate monitoring network in place. Before approving the creation of a Board, Ecology must require that an instream flow rule is in place in the planning area, the planning area is within a fish critical basin with severely impaired flows, and the watershed planning unit has completed watershed and salmon recovery implementation plans. Ecology must also give strong consideration to basins that have completed a judicial proceeding to adjudicate water rights.

The Board must be composed of (1) representatives from each of the counties within the planning area; (2) a representative from the largest city in the planning area; (3) a representative of the largest water user in the planning area; (4) a representative appointed by the conservation districts in the planning area; (5) a representative of the planning area water users; (6) a representative of environmental interests in the planning area; and (7) a representative of citizens at large. In addition, all affected federally-recognized tribes within the planning area must be invited to participate and are able to appoint one member to the Board. Each Board member serves a two-year term and may be reappointed.

The Board will create a policy advisory group that must assist and advise the Board in coordinating and developing water resource programs, planning, and activities within the planning area. The Board will also create a water resource panel that must provide technical assistance for the development of local water plans, advice to the Board on the criteria for establishment of local water plans, and suggestions for the approval, denial, or modification of the local water plans.

The Board must assume all duties, responsibilities, and activities of the watershed planning unit, as well as develop strategic actions for the planning area, make the water management program effective, administer the local water plan process, oversee local water plan implementation, manage banked water, acquire rights, represent the interests of the planning area, and enter into agreements with water right holders to not divert water. The Board may provide for its own funding by adopting fees or soliciting or accepting grants, loans, or donations.

The Board, in collaboration with Ecology, must provide reports to the Legislature every three years beginning in 2012. The reports must summarize the actions, funding, and accomplishments of the Board, as well as any recommendations for improvement of the local water plan process.

The Board may establish a mechanism to bank water within the planning area. The Board may accept a surface water or groundwater right for banking on a permanent or temporary basis. Temporarily banked water remains in the ownership of the water right holder, and permanently banked water must be transferred to the state as a trust water right. The banked water rights or banked portions of water rights are available under the local water plan for stream flow enhancement. Water rights banked for instream flow must not have an extent

and validity review and may not be authorized for other purposes. In addition, banked water rights or banked portions of water rights are not subject to loss by forfeiture. When a temporary deposit is withdrawn from banking, the time period that the water right was banked may not be included in the five years of prior water use review under the relinquishment statute.

The local water plan may be submitted by a water user or group of water users to the Board for approval by the Board and Ecology. The local water plan may be effective for a term of one to ten years. The Board must provide a 30-day public notice period on the proposed local water plan. The final decision of Ecology on the local water plan is appealable to the Pollution Control Hearings Board. A local water plan expires by its own terms, by withdrawal of one or more water users to the local water plan, or upon agreement by all parties to the contract. If the local water plan operates for more than five years and then expires, the water users may request that the elements of the local water plan be made permanent authorizations and conditions for use of the water rights. Water rights in the local water plan are not subject to a review of the extent and validity of the water right, nor subject to loss by forfeiture.

The pilot plan of the local water management program is located in WRIA 32. This act expires June 30, 2019.

**Appropriation:** None.

**Fiscal Note:** Requested on March 9, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is the result of diverse interests that have been passionate about the issue. The Walla Walla river has been over-appropriated since the 1880s. In 2000 three irrigation districts in the Walla Walla watershed committed to conserve significant amounts of water in order to provide water for the Walla Walla River for fish habitat. For the first time in 100 years, the Walla Walla River was wet in the summer. Irrigators, environmental advocates, urban users, and tribes came together for a common cause. This bill is the result of a wonderful collaborative effort with all stakeholders involved in water in this area. There is hope that this can be used as a model across the state. This will provide flows for flexibility. Locals have the best ideas on how to conserve and manage water in their area and this bill will allow locals to manage the water at a local level.

**Persons Testifying:** PRO: Representative Grant-Herriot; Representative Walsh.